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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

YAN YUAN, Plaintiff and Respondent, v. BIAO XING, Defendant and Appellant.	A158470 (Alameda County Super. Ct. No. HF16841490)

The husband in this contested divorce proceeding, Biao Xing, appeals from a post-judgment order entered on July 31, 2019, dividing various assets and ordering him to pay child support in the amount of $2,886.

Xing challenges multiple aspects of the court's ruling: (1) the court's division of stock he purchased through the exercise of his employee stock options (referred to as the "DVAX stock options"); (2) the court's characterization of restricted stock he was granted from his employer in December 2016 as community property (referred to as the "DVAX RSUs"); (3) the court's division of stock he purchased through his employer stock purchase plan (referred to as the "DVAX ESSP stock"); and (4) the amount of child support.

No respondent's brief has been filed.

BACKGROUND

The parties were married in June 1997, separated on December 1, 2016, obtained a status-only judgment of dissolution in November 2017, and have one teenage son.

The record on appeal is limited. It consists of wife's post-judgment request for an order on reserved issues (hereafter, wife's "motion") but omits the attachments to her supporting declaration; husband's written opposition, and the court's July 31, 2019 order. The record does not include a transcript of the hearing, which took place on June 4, 2019.

As relevant here, the July 31, 2019 order appealed from states:

"[Wife] filed a motion regarding a number of reserved issues, including child support and the division of [husband's] employee stock options. [¶] Following a trial last year the Court issued a Findings and Order after Hearing in which [husband] was ordered to provide detailed information from his employer by December 2018 as to why [wife] could not have employee stock options as a non-employee as part of the division of the community assets.[1] [Wife] asserts that her attorney only received a document prepared by [husband] himself indicating that stock could not be divided as she requested. The documentation was not from any official source or financial institution. [¶] Based on the lack of information requested by this Court, the following Order is made:

"1) GILD and DVAX Stock Accounts and ESPP's—Petitioner's community share of any vested and transferable ESPP, RSU or stock options

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1 The referenced ruling is not in the record. A copy was attached to wife's motion but has not been included in the copy of her motion that is included in the appendix filed by husband.

be transferred to a separate account in her name within 30 days of this Order and that any non-vested share be transferred immediately upon vesting;

"2) DVAX Employee Stock Options that were acquired in August of 2016—The Court determines that these are community property in whole. [Wife] is ordered to reimburse [husband] for half of the $1017.00 used to purchase the 579 shares and further orders that be paid within 30 days of this Order. It is further ordered that half of the shares be transferred to a separate account in [wife's] name within 30 days of this Order;

"3) DVAX RSU's granted on December 5, 2016—The Court characterizes this asset as community property and an award for prior service in the 7 months of service that [husband] gave to the company, prior to the separation. [Wife] seeks 25% of stocks that vested between the dates of December 31, 2017 and December 31, 2018 and the Court orders that these shares be transferred into a separate account in [wife's] name within 30 days of this Order.

"If the above Orders are prohibited by employer/company policy and valid proof is provided to [wife's] counsel confirming that fact, the Court orders that [wife] shall have full access to and knowledge of these assets so that [wife] may determine when the stocks will be exercised by [wife].[2]"

The court also, as noted, ordered husband to pay child support in the base amount of $2,886 per month.

DISCUSSION

"The most fundamental principle of appellate review is that 'A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.' " (*Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1006.) In light of that

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[2] The last reference to wife appears to be an error.

presumption, "the burden is on [the appellant] to demonstrate error—and also 'prejudice arising from' that error." (*Ibid.*) With that in mind, we turn to the issues as husband has framed them.

I.

Shares Acquired Through Exercise of DVAX Employee Stock Options.

A. Background

In her request for an order, wife stated under oath the following (italics added):

"**DVAX Employee Stock Options, acquired August 2016:**

"*As indicated at trial in this matter on July 24 & 25, 2018*, [husband] was granted the right to purchase 2500 shares of DVAX ESPP stock in August of 2016, which makes it a community asset. In December 2016, [husband] purchased 1922 shares of stock for $6,708, and in February 2017, after separation, [husband] purchased the remaining 578 shares of that stock for $1,107. [Husband] now asserts that only the stock purchased prior to separation is a community asset because the remainder was purchased with his post separation earnings. He claims that my interest is ½ of $6,708.

"**Order requested**: The entirety of these shares are community property. I, therefore, request an order that I [be] reimbursed [by] [husband] for ½ of the $1,017 used to purchase the 578 shares after separation, and that 50% of the shares be transferred to a separate account in my name. If it is not possible for the shares to be transferred to my separate investment account, I request to have full access to and knowledge of this asset so that I can determine when I want to have my share of the stocks exercised."

Husband responded below as follows, acknowledging wife's interest in the stock options (italics added):

"**3-b. <u>Dynavax (DVAX) Employee Stock Options</u>**

"[Husband] was awarded 25,000 [*sic*] Dynavax employee stock options on 6/1/2016 with a strike price of $16.57 and a vesting period of 4 years. *These are community property.* [*Wife*] *is entitled to half of the above*. The company has been performing poorly and the current stock price is about $6.5. So there is no meaning to exercise the options as there is no value. The options will be canceled within 90 days after [husband] terminates his employment with Dynavax."

The court ordered the following:

"2) DVAX Employee Stock Options that were acquired in August of 2016—The Court determines that these are community property in whole. [Wife] is ordered to reimburse [husband] for half of the $1017.00 used to purchase the 579 shares and further orders that be paid within 30 days of this Order. It is further ordered that half of the shares be transferred to a separate account in [wife's] name within 30 days of this Order."

B. The Issues

On appeal, husband challenges paragraph 2 of the court's order dividing the stock he acquired by exercising his DVAX stock options on multiple grounds, all premised on his assertion that "there was no such thing as 'DVAX Employee Stock Options acquired in August 2016.' " He asserts that the court's order actually "refers to" 2,500 shares of stock he bought through his employer's stock purchase plan (ESPP), and contends the court erred in various ways about that.

As a preliminary matter, husband acknowledges that we review his challenges to the court's ruling for substantial evidence. Under that

standard, among other things, "we 'must resolve all conflicts in the evidence in favor of the prevailing party.' " (*Estes v. Eaton Corporation* (June 29, 2020, No. A152847) __Cal.App.5th__ [2020 WL 3496758, at p. *9].) We are not free to reweigh the evidence ourselves. This principle, along with related constraints on our role as an appellate court, is fatal to husband's arguments on appeal.

First, we do not appear to have a complete record of the evidence bearing on the stock options issue. Wife's motion below referred to the evidence adduced at trial ("As indicated at trial in this matter on July 24 & 25, 2018"), but the reporter's transcript of trial is not part of the appellate record. The inadequate record alone is a basis to affirm paragraph 2 of the court's ruling, because it is husband's burden to show error on the basis of a complete record of all the evidence that was before the court. (See, e.g., *Gonzalez v. Rebollo* (2014) 226 Cal.App.4th 969, 976-977 [rejecting a husband's challenge to family court order where appellate record does not contain all evidence introduced below on child support issue or hearing transcript].)

Second, the record that we do have is itself sufficient to reject husband's challenge to paragraph 2 of the court's ruling. In his written opposition to wife's motion below, husband admitted the existence of his DVAX stock options, he admitted they were community property, and wife's declaration states they were acquired in August 2016. Thus, paragraph 2 of the court's ruling dividing the stock options is supported by substantial evidence.[3]

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[3] Even if wife and/or the court misstated the date the options were granted (husband stated in his declaration they were granted in June 2016), husband clearly was not misled by the court's ruling. There is no indication

Husband also challenges that portion of paragraph 2 directing wife to reimburse him for half the cost of his exercise of the stock options, denying in effect that he ever exercised his stock options. He states: "the order['s] statement that '[wife] is ordered to reimburse [husband] for half of the $1017.00 used to purchase the 579 shares' was carelessly taken from [wife's] brief and [is] baseless. There was no such fact that I purchased 579 shares for $1017. Similarly, there was no such fact that I purchased 1922 shares in December 2016 as alluded by [wife] and counsel (see Appendix Volume 1, Pages [*sic*] AA012).[4] . . . [Wife] and counsel intentionally distorted the facts to confuse the court." Here again, substantial evidence supports the court's ruling: wife attested to these facts in her declaration. Husband is asking us to reweigh the evidence on appeal which we cannot do.

II.

Stocks Purchased Through DVAX Employer Stock Purchase Plan

Next, although not captioned under a separate argument heading as it should be (see Cal. Rules of Court, rule 8.204(a)(1)(B)), husband also challenges on substantial evidence grounds the court's finding that the stock purchased through his DVAX employer stock purchase plan ("ESPP") was community property and accordingly its division of that stock between him and wife.

There are several problems with his argument. First, much of his factual discussion of this issue is not supported by citations to the appellate

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in the record he took steps to correct the court's order to reflect what he asserts is the true date of the grant (such as by providing copies of relevant documentation), nor has he shown that any error in identifying the date of the stock options grant has prejudiced him.

4 The cited page of the record is that portion of wife's request for an order attesting to such facts.

record. This is improper. We are "not required to make an independent search of the record and may disregard any claims when no reference is furnished." (*Jumaane v. City of Los Angeles* (2015) 241 Cal.App.4th 1390, 1406.) Second, husband has cited no statutes, case law or other authority governing what constitutes community property, much less presented a cogent legal analysis of how that law applies on the record before us. We may not act as an advocate on his behalf in this circumstance by conducting our own legal research and analysis in a search for some support for his conclusory assertion of error. (See *United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 153 (*United Grand Corp.*).) " 'In order to demonstrate error, an appellant must supply the reviewing court with some cogent argument supported by legal analysis and citation to the record.' " (*Id.* at p. 162 [argument supported by one, unexplained case citation held forfeited].) Husband has failed to do this.[5] For all of these reasons, husband has failed to meet his burden on appeal of demonstrating that the court's division of his DVAX ESSP stock is erroneous.

[5] His sole argument that is supported by citations to legal authority is the following: "The trial court failed to recognize the substantial evidence against the court's finding (*People v. Friend* (2009) 47 Cal.4th 1, 40-41, 43-44). The court failed to properly excise [sic] its discretion but relied carelessly on Plaintiff's inaccurate and distorted description and allegation (*People v. Cortez* (1971) 6 Cal.3d 78, 85-86; *People v. Cluff* (2001) 87 Cal.App.4th 991, 998). The standard of review was in question." The three cited criminal cases have no relevance. On the contrary, one reiterates the principle that " 'it is not a proper appellate function to reassess the credibility of witnesses.' " (*Friend*, at p. 44.)

III.

DVAX Restricted Stock Units (RSU's)

Next, husband challenges paragraph 3 of the court's order awarding wife a community interest in a portion of the restricted stock units (RSU's) he was granted by his employer. This argument fails for many of the same reasons just discussed.

First, husband has not included all of the relevant evidence bearing on the court's division of the restricted stocks. In her motion, wife argued (among other things) the following: "While conditioned upon [husband's] continued employment, the RSUs were not granted to all employees, but rather [to] only certain employees as indicated on the attached *Exhibit 4, Dynavax email of 2/6/18*. As such, it was [husband's] efforts prior to the date of separation (just 4 days prior to the grant) that earned him the grant." But husband has not included the attached email in the appellate appendix. This is fatal to our consideration of his challenge to the court's ruling. "On review for sufficiency of evidence, we must consider all the evidence and view it in the light most favorable to the prevailing party. [Citation.] Our authority '*begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination.' [Citation.] Without a complete record that includes the evidence submitted by *both* parties, we could not say the evidence is insufficient to support the trial court's finding" that is challenged here. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399, 426.)

Furthermore, here again, husband has not discussed or analyzed any law bearing on this issue, and so he has not demonstrated any error. (See, e.g., *United Grand Corp., supra,* 36 Cal.App.5th at pp. 153, 163.)

Husband's one-paragraph challenge to the award of child support, which is devoid of any citations to the record and cites no pertinent law, fails for the same reasons and does not require extended discussion.

In sum, husband has failed to demonstrate any error in any aspect of the court's ruling.

DISPOSITION

The July 31, 2019 order is affirmed.

STEWART, J.

We concur.

RICHMAN, Acting P.J.

MILLER, J.

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